

(2013) 02 AP CK 0071

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 3029 of 1998

Excise Superintendent

APPELLANT

Vs

Kundena Bhagyamma, President, Tappers Co-op. Society and
Commissioner for Workmen's Compensation

RESPONDENT

Date of Decision : 14-02-2013

Acts Referred:

Citation : (2013) 4 ACC 763 : (2014) ACJ 273 : (2013) 4 ALD 320 : (2013) 2
ALT 806 : (2013) 138 FLR 460 : (2013) 138 FLR 363

Judgement

V. Eswaraiah, J.—The appeal is filed against the order in W.C. No. 356 of 1996(F) on the file of the Commissioner for Workmen's Compensation, Hyderabad (Twin Cities). The 1st respondent herein made a claim for compensation alleging that her husband was a toddy tapper employed by the 2nd respondent and he received injuries due to snake bite on 04.07.1996 and he died. He was said to be aged 40 years and was earning Rs. 1,500/- per month. She claimed a compensation of Rs. 1,38,728/-. It was also pleaded that as the 1st respondent appointed the 2nd respondent by collecting licence fee, the 1st respondent is also liable to pay the compensation. Agreeing with the contentions of the claimant, the Commissioner has granted a compensation of Rs. 1,21,783/-. Aggrieved by the fixation of the liability on the 1st respondent, the present appeal has been filed.

2. When the matter came up for consideration before the Hon"ble Sri Justice P.S. Narayan, he has referred the matter to the Division Bench as there was said to be conflict between two decisions of the Division Bench reported in Gangireddy Venkateswara Rao Vs. Divisional Manager, New India Assurance Co., Guntur and Others, and also New India Assurance Company Limited Vs. A. Senapathi Reddy and Another, .

3. The point for consideration is whether there is any conflict of opinion in the decisions referred to supra and if an appeal is not maintainable u/s 30(1) of the Act for failure to deposit the compensation amount as provided under third

proviso and whether it is curable defect?

4. POINT:

There is no dispute in this case that the appeal was filed without depositing the compensation amount and it was subsequently deposited, which is also not in dispute. As per Section 30(1) of the Workmen's Compensation Act (for short, "the Act"):

30. Appeals:-(1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely--

(a) an order as awarding as compensation a lumpsum whether by way of redemption of a half monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;

[Provided further that no appeal by an employer under Clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against]

(3) The provisions of Section 5 of [the Limitation Act, 1963 (36) of 1963] shall be applicable to appeals under this Section.

5. In the decisions referred supra, the Division Bench has held that the amount has to be deposited at the time of filing of the appeal and insurance company stands in the shoes of the employer and therefore, the Insurance Company is also bound by the provisions of the Act when an appeal is preferred. In the first case, the Court has not considered as to whether such a failure disentitles completely the right of filing of an appeal and whether it is curable defect or incurable defect was not at all considered. In the later case, the earlier decision was also considered and the Court was of the opinion that though as per the provisions of the Act, the compensation has to be deposited before preferring the appeal, but still the failure to do so is a curable defect and it can be condoned. From the above provision it is quite clear that the provisions of the Limitation Act applies and therefore, the delays can be condoned in preferring the appeals. Accordingly, in the later case directions were also given if the amounts were deposited subsequently and if they are rejected earlier by virtue of the said judgment of the Court they shall be restored to file. In fact, the Court further gave a liberty to deposit the amounts in cases where the amounts have not been deposited or partly deposited as required under third proviso to Section 30(1) of the Act as in cases of filing of appeals without Court fee or with deficit Court fee. Accordingly, in the later case, in fact the power of the Court to condone the delay in filing of the appeal or to deposit the compensation is no longer a matter for dispute.

6. In this connection, it is useful to refer to a decision reported in Zila Sahakari Kendrya Bank Maryadit Vs. Shahjadi Begum and Others, . That was a case where the jeep belonging to the bank was given on requisition to the Government and

the incident happened. The bank was also held liable by the Tribunal and the High Court did not entertain the appeal. The Hon"ble Supreme Court was of the view when the bank does not come within the meaning of the employer the very award passed by the Commissioner will be without jurisdiction and it will be a nullity. It was a coram non judice. In that case, when the matter has been taken to the High Court, the High Court has dismissed the appeal on the ground, apart from the other grounds, that the deposit has not made of the amount at the time of filing of the appeal u/s 30 of the Act. It has been only deposited subsequently and the Court felt that it was not satisfied that there is any sufficient cause for condoning the delay in that case. When the matter was carried in appeal to the Hon"ble Supreme Court in para No. 13 at page No. 696 the Court found that the High Court should have taken a liberal view in the matter and condoned the delay in filing the appeal as also depositing awarded amount in the Court. This clearly shows that the Court has got ample power to condone the delay in filing the appeal or in depositing the compensation amount. In that case also, the appeal was filed earlier and thereafter the deposit was made after some time.

7. Therefore, in view of the above circumstances, it cannot be doubted that the Court has got every power to condone the delay and it is a curable defect and when particularly the provisions under Limitation Act are made applicable to the appellants u/s 30 of the Act. Therefore, we do not find any conflict of judgments and the failure to deposit the compensation amount along with the appeal is a curable defect and there is no need for any clarification on this difference and when more so the judgment of the Supreme Court is without any ambiguity and the second case supra is in conformity with the law laid down by the Supreme Court. Accordingly, the matter is directed to be posted before the learned single Judge for disposal according to law.